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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,665	02/15/2001	Yiqun Wang	1001.1412101	2225
11050 7590 04/30/2012 SEAGER, TUFTE & WICKHEM, LLC 1221 Nicollet Avenue Suite 800 Minneapolis, MN 55403				
EXAMINER				
DOWE, KATHERINE MARIE				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
04/30/2012		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action **Before the Filing of an Appeal Brief**

Application No.

09/784,665

Applicant(s)

WANG ET AL.

Examiner

KATHERINE DOWE

Art Unit

3734

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 April 2012 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

NO NOTICE OF APPEAL FILED

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires _____ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).
Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
b) ☐ They raise the issue of new matter (see NOTE below);
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): (a) ☐ will not be entered, or (b) ☒ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

STATUS OF CLAIMS

14. The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 22,24-26,28,30,35 and 37.

Claim(s) withdrawn from consideration: 31-34 and 36.

/Katherine M Dowe/
Examiner, Art Unit 3734

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues Matsumoto's device is designed to permit objects having a wide variety of outer diameters to be inserted through the seal and hold each in a liquid-tight state. Applicant contends that if the seal was formed of a solid cross-section, as taught by Kranys, the seal would not function as needed because a slit formed by insertion of a large diameter object would not maintain a fluid tight seal about a smaller diameter object subsequently inserted. The examiner respectfully disagrees and notes Matsumoto teaches a single slit size for accomodating both small and large diameters. Thus, it is obvious a large slit size formed by a large object initially inserted in the modified seal, as in Applicant's hypothetical situation, would be capable of holding a smaller diameter object subsequently inserted therethrough in a liquid tight state. It is further noted that Applicant has not provided any evidence to establish an unobvious difference between the claimed product and the prior art, but rather has merely argued such alleged difference. Mere arguments can not take the place of evidence. In re Walters, 168 F.2d 79,80, 77 USPQ 609,610 (CCPA 1948); In re Cole, 326 F.2d. 769,773, 140 USPQ 230,233 (CCPA 1964); In re Schulze, 346 F.2d 600,602, 145 USPQ 716,718 (CCPA 1965); In re Lindner, 457 F.2d 506,508, 173 USPQ 356,358 (CCPA 1972); In re Pearson, 494 F.2d 1399,1405, 181 USPQ 641,646 (CCPA 1974); Meitzner v. Mindick, 549 F.2d 775,782, 193 USPQ 17,22 (CCPA), cert. Denied, 434 U.S. 854 (1977); In re DeBlauwe, 736 F.2d 699,705, 222 USPQ 191,196 (Fed. Cir. 1984).

Applicant additionally argues the prior art fails to teach the seal is "self-sealing such that the seal maintains a vacuum within the inflation lumen". Applicants argue a valve member may maintain a liquid seal without necessarily being capable of maintaining a vacuum. The Examiner agrees; however it is noted that Matsumoto teach maintaining an liquid-tight seal OR air-tight seal (col 6, ll 4-5). When the seal maintains an air-tight state, it must be capable of maintaining a vacuum.